

**6101.9 Election of hearing or record submission [Rule 9].**

Each party shall inform the Board, in writing, whether it elects a hearing or submission of its case on the record pursuant to 6101.11. Such an election may be filed at any time unless a time for filing is prescribed by the Board. A party electing to submit its case on the record pursuant to 6101.11 may also elect to appear at a hearing solely to cross-examine any witness presented by an opposing party, provided that the Board is informed of that party's intention within 10 working days of its receipt of notice of the election of hearing by another party. If a hearing is elected, the election should state where and when the electing party desires the hearing to be held and should explain the reasons for its choices. A hearing will be held if one of the parties elects one. If a party's decision whether to elect a hearing is dependent upon the intentions of another party or parties, it shall consult with such other party or parties before filing its election. If there is to be a hearing, it will be held at a time and place prescribed by the Board after consultation with the party or parties electing the hearing. The record submissions from a party that has elected to submit on the record shall be due as provided in 6101.11.

**6101.10 Conferences; conference memorandum; prehearing order; prehearing and presubmission briefs [Rule 10].**

(a) *Conferences.* The Board may convene the parties in conference, either by telephone or in person, for any purpose. In protests, a conference will ordinarily be held within 6 working days after the filing of the protest. The conference may be stenographically or electronically recorded, at the discretion of the Board. Matters to be considered and actions to be taking at a conference may include:

(1) Simplifying, clarifying, or severing the issues;

(2) Stipulations, admissions, agreements, and rulings to govern the admissibility of evidence, understanding on matters already of record, or other similar means of avoiding unnecessary proof;

(3) Plans, schedules, and rulings to facilitate discovery;

(4) Limiting the number of witnesses and other means of avoiding cumulative evidence;

(5) Stipulations or agreements disposing of matters in dispute; or

(6) Ways to expedite disposition of the case or to facilitate settlement of the dispute, including, if the parties and the Board agree, the use of alternative dispute resolution techniques, such as mediation, minitrials, and summary hearings.

(b) *Conference memorandum.* The Board may prepare a memorandum of the results of a conference or issue an order reflecting any actions taken, or both. Any memorandum or order so issued shall be placed in the record of the case. A copy of each memorandum will be sent to each party, and each party shall have 5 working days after receipt of the memorandum to object to the memorandum to object to the substance of it.

(c) *Prehearing order.* The Board may issue a prehearing or presubmission order to govern the proceedings in a case.

(d) *Alternative dispute resolution.* If alternative dispute resolution (ADR) is agreed to by the parties and the Board, a "Board Neutral" (either a judge or an attorney employed by the Board) will be appointed by the chairman of the Board or a designee to conduct the agreed upon proceedings. Alternatively, the parties may request that the panel chairman serve as the Board Neutral, in which case, if the ADR is unsuccessful, the panel chairman will retain the case. The panel chairman may suspend proceedings for a short period of time while the parties and the Board attempt to resolve the dispute, but the use of an ADR technique will not toll the relevant statutory time limit for deciding the case. This procedure is not intended to preclude use by the parties of other ADR techniques that do not require direct Board involvement.

(e) *Prehearing or presubmission briefs.* A party may, by leave of the Board, file a prehearing or presubmission brief at any time before the hearing or upon or before the date on which first record submissions are due.

**6101.11 Submission on the record without a hearing [Rule 11].**

(a) *Submission on the record.* A party may elect to submit its case on the record without a hearing. A party submitting its case on the record may include in its written record submission or submissions:

(1) Any relevant documents or other tangible things it wishes the Board to admit into evidence;

(2) Affidavits, depositions, and other discovery materials that set forth relevant evidence; and

(3) A brief or memorandum of law.

The Board may require the submission of additional evidence or briefs and may order oral argument in a case submitted on the record.

(b) *Time for submission.* (1) If all parties have elected to submit the case on the record, the Board will issue an order prescribing the time for initial and, if appropriate, reply record submissions.

(2) If at least one party has elected a hearing and any other party has elected to submit its case on the record, any party submitting on the record shall make its initial submission no later than the commencement of the hearing or at an earlier date if the Board so orders, and a further submission in the form of a brief at the time for submission of posthearing briefs. The Board will accept a further record submission in the form of a reply brief if a party that attended the hearing is permitted to submit a reply brief; such a record submission will be due at the same time as the reply brief of the party or parties that attended the hearing. Submission of record submissions in the form of briefs is governed by 6101.25.

(c) *Objections to evidence.* Unless otherwise directed by the Board, objections to evidence (other than the appeal or protest file and supplements thereto) in a record submission may be made within 3 working days after the filing of the submission in a protest, and within 10 working days after the filing of the submission in any other kind of case. Replies to such objections, if any, may be made within 2 working days after the filing of the objection in a protest, and within 10 working days after the filing of the objection in any other kind of case. The

Board may rule on such objections in its opinion deciding the merits or otherwise disposing of the case.

**6101.12 Record of Board proceedings [Rule 12].**

(a) *Composition of the record for decision.* The record upon which any decision of the Board will be rendered consists of:

(1) The notice of appeal, petition, protest, or application;

(2) Appeal or protest file exhibits other than those as to which an objection has been sustained;

(3) Hearing exhibits other than those as to which an objection has been sustained;

(4) Pleadings;

(5) Motions and responses thereto;

(6) Memoranda, orders, rulings, and directions to the parties issued by the Board;

(7) Documents and other tangible things admitted in evidence by the Board;

(8) Written transcripts or electronic recordings of proceedings;

(9) Stipulations and admissions by the parties;

(10) Depositions, or parts thereof, received in evidence;

(11) Written interrogatories and responses received in evidence;

(12) Briefs and memoranda of law; and

(13) Anything else that the Board may designate.

All other papers and documents in a case are part of the administrative record of the proceedings. The administrative record shall include file and hearing exhibits offered but not received in evidence in a case; it may also include correspondence with and among the parties, and depositions, interrogatories, offers of proof contained in the transcript, and other documents that are not part of the record for decision.

(b) *Time for entry into the record.* Except as the Board may otherwise order, nothing other than posthearing briefs will be received into the record after a hearing is completed. In cases submitted on the record without a hearing, nothing will be received into the record after the time for filing of the last